

Legal Notice

Village of Kingsley, Notice of Adoption

Please take notice that on Monday, November 13, 2017 at 6:00 p.m., in the Village Hall, 207 S. Brownson Ave, Kingsley, MI 49649, The Village Council adopted the following Ordinance.

VILLAGE OF KINGSLEY
ORDINANCE AMENDING THE ZONING CODE TO AUTHORIZE CERTAIN MEDICAL
MARIHUANA FACILITES
ORDINANCE NO. 17-02

At a regular meeting of the Village Council of Kingsley, County of Grand Traverse, Michigan, held at the Kingsley Village offices on November 13, 2017, at 6 pm.

MEMBERS PRESENT: Bogart, King, Alger, Hamilton, McPherson, Walton, Weger

MEMBERS ABSENT: None

It was moved by Member Walton, and seconded by Member McPherson, that the following Ordinance be adopted under authority of Act 94 of the Public Acts of Michigan of 1933, as amended.

Upon roll call vote, the vote upon the motion adopting said Ordinance was as follows:

YEAS: Bogart, McPherson, Walton, Weger

NAYS: Alger, Hamilton, King

ABSENT: None

ABSTAIN: None

The Village of Kingsley hereby Ordains:

Section 1. Purpose. Section 154.002, 152.157, 152.158, 152.132, and 152.223 of the Village of Kingsley Code of Ordinances are amended as follows:

That the Kingsley Zoning Code is hereby amended by adding to the section numbered §152.005 Definitions, which section shall add the following Definitions as follows:

"Grower" means as defined in §154.002 Definitions.

"Floor Plan" means a plan that must identify the number of plants, chemical storage, space and other critical aspects of the layout of the Permitted Premises.

"Licensee" means as defined in §154.002 Definitions.

"Marihuana" means as defined in §154.002 Definitions.

"Marihuana Facility" means as defined in §154.002 Definitions.

"Marihuana Plant" means as defined in §154.002 Definitions.

"Marihuana-infused Product" means as defined in §154.002 Definitions.

"Monitored Security Gate" means any gate used for ingress or egress on the Permitted Property through the Perimeter Enclosure. Each such gate must be monitored by a security guard or other secure access system, which verifies the identity of the person(s) entering or exiting the Perimeter Enclosure.

"Permit" means as defined in §154.002 Definitions.

"Permit Holder" means as defined in §154.002 Definitions

"Permitted Premises" means as defined in §154.002 Definitions

"Permitted Property" means as defined in §154.002 Definitions

"Perimeter Enclosure" means a continuous, opaque fence of commercial quality or masonry wall, or any combination of both that fully encloses a Permitted Premises. The Perimeter Enclosure must be no less than ten (10) feet in height and no more than twelve (12) feet in height. The Perimeter Enclosure must be at least forty (40) feet or the distance necessary to accommodate the radius of the local fire jurisdictions largest apparatus, whichever is greater, away from the Permitted Premises. Any ingress or egress through the Perimeter Enclosure must be by a Monitored Security Gate. There is no property line setback requirement for a Perimeter Enclosure. Any Perimeter Enclosure must provide for secured access points for fire equipment and personnel, which must be approved by the local fire department with jurisdiction over the Permitted Premises and/or Permitted Property.

"Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

"Processor" means as defined in §154.002 Definitions

"Safety Compliance Facility" means as defined in §154.002 Definitions

"Secure Transporter" means as defined in §154.002 Definitions

“Security Plan” means an interior and exterior security plan that sufficiently demonstrates to the Village planning commission that appropriate measures will be installed and in place to prevent unpermitted access to the Marihuana and the Permitted Premises by non-authorized personnel. In order to sufficiently demonstrate, the Security Plan must include:

- (i) A physical human security presence on the Permitted Property at all times;
- (ii) a fully functional, alarm system and video monitoring/recording system at all times. The video monitoring system must provide monitoring of both the interior and exterior of the facility, to allow the operator to detect all activity on the property. Video footage must be recorded in a format that can be viewed by law enforcement personnel. Video footage must be preserved for at least 120 days and turned over to law enforcement personnel upon written request within 24 hours of such request.
- (iii) A Perimeter Enclosure; and
- (iv) Interior security provisions, which must include that Marihuana Plant product must be located in an enclosed, locked facility. An "enclosed locked facility" means a fully enclosed area equipped with secured locks or other functioning security devices that permit access only by a Licensee and/or their authorized employees. Valuables must be removed from the Permitted Premises or locked in a safe on the premises at all times when the Permitted Premises are not in operation.

"State Operating License" means as defined in §154.002 Definitions

“Village Operating License” means a license that is issued under Ordinance 17-03.

Industrial District Amendments

That the Kingsley Zoning Code is hereby amended by adding sections, to be numbered §152.157(C) (6)-(9), which section shall read as follows:

- (6) A marihuana Grower as authorized by Ordinance 17-03 of the Village of Kingsley;
- (7) A marihuana Processor as authorized by Ordinance 17-03 of the Village of Kingsley;
- (8) A marihuana Safety Compliance Facility as authorized by Ordinance 17-03 of the Village of Kingsley; and
- (9) A marihuana Secure Transporter as authorized by Ordinance 17-03 of the Village of Kingsley.

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.157 (D), which section shall read as follows:

(D) Any Permit issued for the uses identified in §152.157(C)(6)-(9) may not be assigned or transferred to any Person unless the assignee or transferee has submitted an application, all required fees under this Ordinance are paid and has been granted a Village Operating License. No Permit issued under this Ordinance is transferable to any other location except

for the Permitted Property. A Permit alone shall not allow operations at a Marihuana Facility. In order to operate on a Permitted Property a Licensee must obtain a Village Operating License for the specific Marihuana Facility that has been permitted for that use.

A Permit shall be issued only if the applicant has a current, valid Village Operating License or is requesting a Village Operating License for a Permitted Property with written permission of the Permit Holder. The Village Operating License must be renewed annually.

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.158 (H), which section shall read as follows:

(H) In addition to the use requirements in §152.158 (A)-(G), a marihuana grower, marihuana processor, marihuana secure transporter, and marihuana safety compliance facility, in accordance with the provisions of state law, may be permitted through the issuance of a special use permit pursuant to Section §152.157, provided that:

1. Any uses or activities found by the state of Michigan or a court with jurisdiction to be unconstitutional or otherwise not permitted by state law may not be permitted by the Village. In the event that a court with jurisdiction declares some or all of this article invalid, then the Village may suspend the acceptance of applications for special use permits pending the resolution of the legal issue in question.
2. At the time of application for a special use permit the marihuana facility must be licensed by the state of Michigan and then must be at all times in compliance with the laws of the state of Michigan including but not limited to the Michigan Medical Marihuana Act, MCL 333.26421 et seq.; the Medical Marihuana Facilities Licensing Act, MCL 333.27101 et seq.; and the Marihuana Tracking Act, MCL 333.27901 et seq.; and all other applicable rules promulgated by the state of Michigan.
3. At the time of application for a special use permit the marihuana facility must be licensed by Village, [or have the Village Operating License concurrently in process along with the special use permit and site plan approval], and then must be at all times in compliance with Ordinance 17-03 of the Village of Kingsley.
4. The use or facility must be at all times in compliance with all other applicable laws and ordinances of the Village.
5. The Village may suspend or revoke a special use permit based on a finding that the provisions of the special use standards in this section, all other applicable provisions of this zoning ordinance, Ordinance 17-03 of the Village of Kingsley, or the terms of the special use permit and approved site plan are not met.

6. A marihuana facility, or activities associated with the licensed growing, processing, testing, transporting, or sales of marihuana, may not be permitted as a home business or accessory use nor may they include accessory uses except as otherwise provided in this ordinance.
7. Signage requirements for marihuana facilities, unless otherwise specified, are as provided in Section §152.227 (SIGN REGULATIONS).

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.158 (I), which section shall read as follows:

(I) In addition to the use requirements in §152.158 (A)-(H), a Marihuana Facility as identified in §152.157(C)(6) [Grower] must comply with the following:

(a) The Permitted Premises must not be located within 500 feet of any Residential District, such distance limitations must be measured in a straight line from the Permitted Premises to the respective existing residential districts boundary line. Nor shall the Permitted Premises be located within 500 feet of M-113, such distance limitations must be measured in a straight line from the Permitted Premises to the respective right-of-way boundary line;

(b) Prohibit smoking or consumption of Marihuana on the Permitted Property;

(c) Implement a drug & alcohol testing program for employees, pursuant to Regulation Number 2.07 (SPDOC No. 10-05), as amended and with definitions outlined in Article 53-385154-7, as amended;

(d) The Marihuana Facility must not sell or otherwise distribute Marihuana or Marihuana-infused Products directly to the public;

(e) The Permitted Property and Permitted Premises owner must maintain general liability and property insurance as required by MCL 333.27206(b);

(f) All necessary County and State building, electrical, plumbing and mechanical permits must be obtained before operations commence at the Permitted Property and/or Permitted Premises;

(g) The Permitted Property and/or Permitted Premises is subject to scheduled inspections and approval by the local fire authority, law enforcement, Village zoning administrator, the local building official or state agency to insure compliance with all applicable state and local, ordinances, laws, rules and regulations, as part of any necessary inspection;

(h) The Permitted Premises must receive OSHA/MIOSHA certifications regarding safety of environment for the Permitted Premises;

(i) No minors must be allowed on the Permitted Property without a parent or guardian;

(j) The Permitted Premises must obtain all applicable local and state approval for discharge of growing by-products into the Village's sewer system;

(k) Provide the Village with a waste disposal plan which must be included with all applications for a grow operation detailing plans for chemical disposal and plans for plant waste disposal;

(l) Discharge of any toxic, flammable or hazardous materials in a regulated quantity under state, federal or local law into the Village sewer system is prohibited;

(m) Any exterior lighting methods utilized between the hours of 9:00 p.m. to 7:00 a.m. must employ shielding methods to prevent ambient light spillage onto adjacent property. In no event must the Village's lighting or Night Sky (§152.222) ordinances be violated, nor at any time must any ambient light spill onto residential zoned districts;

(n) Odors from the operations of a Marihuana Facility must be contained through use of operable filtration to ventilation and exhaust equipment. Odors must otherwise be effectively confined to the interior of the Permitted Premises from which the odor is generated to prevent fugitive nuisance odors from escaping the facility;

(o) The Marihuana Facility must not directly or indirectly advertise, or promote its services as a Marihuana Facility on the Permitted Property, other than a sign identifying the business name;

(p) In the event of any explosion, release, or hazard that results from the growth, cultivation or processing of Marihuana Plants, the responsible party will be responsible for reimbursement of any emergency response costs which were deployed to remediate, contain or respond to the explosion, fire, release or hazard, including transportation, overtime costs, special equipment or testing, and must be responsible for the repair of property damages, remediation, or medical expenses for injuries resulting from such explosion, release, harmful emission, or hazard;

(q) Outdoor storage is strictly prohibited;

(r) A Security Plan and Floor Plan must be submitted with any application for a Permitted Property and/or Permitted Premises. The Security Plan and Floor Plan must be treated as a confidential document by the Village and its agents, exempt from disclosure to the extent permitted under the laws of this state or the Freedom of Information Act.

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.158 (J), which section shall read as follows:

(J) In addition to the use requirements in §152.158 (A)-(H), a Marihuana Facility as identified in §152.157(C)(7) [Processor] must comply with all of the §152.157(I) provisions.

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.158 (K), which section shall read as follows:

(K) In addition to the use requirements in §152.158 (A)-(H), a Marihuana Facility as identified in §152.157(C)(8) [Safety Compliance Facility] must comply with the following:

(a) All of the following §152.157(I) provisions: (b), (c), (d), (e), (f), (g), (h), (i), (m), (n), (o), (p), and (r);

(b) All activities of a marihuana safety compliance facility, including all transfers of marihuana, shall be conducted within the structure and out of public view;

(c) The Permitted Premises must not be located within 100 feet of any existing Residential District, such distance limitations must be measured in a straight line from the Permitted Premises to the existing respective residential districts boundary line;

(d) In the event of any explosion, release, or hazard that results from the operations of the Safety Compliance Facility, the responsible party will be responsible for reimbursement of any emergency response costs which were deployed to remediate, contain or respond to the explosion, fire, release or hazard, including transportation, overtime costs, special equipment or testing, and must be responsible for the repair of property damages, remediation, or medical expenses for injuries resulting from such explosion, release, harmful emission, or hazard.

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.158 (L), which section shall read as follows:

(L) In addition to the use requirements in §152.158 (A)-(H), a Marihuana Facility as identified in §152.157(C)(9) [Secure Transporter] must comply with the following:

(a) All of the following §152.157(I) provisions: (b), (c), (d), (e), (f), (g), (h), (j), (m), (n), and (o);

(b) The Permitted Premises (used for the containment of stored Materials) must not be located within 100 feet of any existing Residential District, such distance limitations must be measured in a straight line from the Permitted Premises to the respective existing residential districts boundary line;

(c) In the event of any explosion, release, or hazard that results from the operations of the Secured Transporter, the responsible party will be responsible for reimbursement of any emergency response costs which were deployed to remediate, contain or respond to the explosion, fire, release or hazard, including transportation, overtime costs, special equipment or testing, and must be

responsible for the repair of property damages, remediation, or medical expenses for injuries resulting from such explosion, release, harmful emission, or hazard.

That section §152.157(C) of the Kingsley Zoning Code is hereby amended to read as follows:

(10) Taverns, bars, and motels;

C-2 District Amendments

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.132 (B), which the section reads as follows:

(10) A marihuana Safety Compliance Facility as authorized by Ordinance 17-02 of the Village of Kingsley; and

(11) A marihuana Secure Transporter as authorized by Ordinance 17-02 of the Village of Kingsley.

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.132 (C)-(D), which the section reads as follows:

(C) In addition to the applicable use requirements pursuant to §152.132(A), a §152.132(B)(10) Safety Compliance Facility must comply with the following:

(a) Provide to the Village a waste disposal plan that must be included with all applications for a Safety Compliance Facility's operations detailing plans for chemical disposal and plans for all waste disposal;

(b) The Permitted Premises must obtain all applicable local and state approval for discharge of the Safety Compliance Facility's by-products into the Village's sewer system;

(c) Odors from the operations of a Marihuana Facility must be contained through use of operable filtration to ventilation and exhaust equipment. Odors must otherwise be effectively confined to the interior of the Permitted Premises from which the odor is generated to prevent fugitive nuisance odors from escaping the facility;

(d) The Permitted Premises must not be located within 100 feet of any existing Residential District, such distance limitations must be measured in a straight line from the Permitted Premises to the respective existing residential districts boundary line;

(e) In the event of any explosion, release, or hazard that results from the operations of the Safety Compliance Facility, the responsible party will be responsible for reimbursement of any emergency response costs which were deployed to remediate, contain or respond to the explosion,

fire, release or hazard, including transportation, overtime costs, special equipment or testing, and must be responsible for the repair of property damages, remediation, or medical expenses for injuries resulting from such explosion, release, harmful emission, or hazard; and

(f) If compliance under §152.132(C) conflicts with any other applicable provisions of this Ordinance, §152.132(C) controls.

(D) In addition to the applicable use requirements pursuant to §152.132(A), a §152.132(B)(11) Secure Transporter Facility must comply with the following:

(a) The Permitted Premises must not be located within 100 feet of any existing Residential District, such distance limitations must be measured in a straight line from the Permitted Premises to the respective existing residential districts boundary line;

(b) In the event of any explosion, release, or hazard that results from the operations of the Secured Transporter, the responsible party will be responsible for reimbursement of any emergency response costs which were deployed to remediate, contain or respond to the explosion, fire, release or hazard, including transportation, overtime costs, special equipment or testing, and must be responsible for the repair of property damages, remediation, or medical expenses for injuries resulting from such explosion, release, harmful emission, or hazard; and

(c) If compliance under §152.132(C) conflicts with any other applicable provisions of this Ordinance, §152.132(C) controls.

That the Kingsley Zoning Code is hereby amended by adding a section, to be numbered §152.223(M), which the section reads as follows:

(M)


1. No marihuana facility operating or purporting to operate prior to December 15, 2017, shall be deemed to have been a legally existing use nor shall the operation of such marihuana facility be deemed a legal nonconforming use under this ordinance.
2. A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment thereto.
3. Discontinuation of a state medical marihuana facility license shall constitute prima facie evidence that a nonconformity has been discontinued.

Section 2. Severability. If any section of this ordinance is found to be invalid or unconstitutional, it does not affect the validity of the remaining sections.

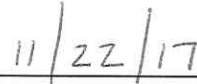
Section 3. Effective Date. This ordinance shall be published within fifteen (15) days after its passage and shall become effective seven (7) days from the date of publication.

Certification

I, Ann Olson, the duly qualified and acting Clerk of the Village of Kingsley, Grand Traverse County, Michigan (the "Village") do hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Village Council on November 13, 2017, a Regular Meeting of the Kingsley Village Council. I further certify that public notice of such meeting was given as provided by law.



Ann Olson
Kingsley Village Clerk



Date

ADOPTED: November 13, 2017

PUBLISHED: November 25, 2017

EFFECTIVE: December 2, 2017